

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Samrawit Tadesse	Team: Team # 7	CCRB Case #: 200803123	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 10/12/2006 4:45 PM	Location of Incident: § 87(2)(b) and an unknown precinct stationhouse		Precinct: 47	18 Mo. SOL 4/12/2008	EO SOL 4/12/2008
Date/Time CV Reported Mon, 03/03/2008 2:57 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 03/03/2008 2:57 PM		
Complainant/Victim	Type	Home Address			
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)			
Witness(es)	Home Address				
§ 87(2)(b)	§ 87(2)(b)				
Subject Officer(s)	Shield	TaxID	Command		
1. POM Robert Roda	01234	939332	047 PCT		
Witness Officer(s)	Shield No	Tax No	Cmd Name		
1. POM Robert Konner	10398	938787	047 PCT		
2. SGT Jeffrey Fusco	00377	915755	047 PCT		
Officer(s)	Allegation			Investigator Recommendation	
A.POM Robert Roda	Abuse: PO Robert Roda seized § 87(2)(b)'s property at § 87(2)(b) Bronx, NY.			§ 87(2)(b)	
B.POM Robert Roda	Force: PO Robert Roda used physical force against § 87(2)(b) at § 87(2)(b) Bronx, NY. and in an unknown precinct stationhouse.			§ 87(2)(b)	
C.POM Robert Roda	Abuse: PO Robert Roda did not obtain medical treatment for § 87(2)(b) at an unknown precinct stationhouse.			§ 87(2)(b)	

Synopsis

On October 12, 2006, at approximately 4:45pm, § 87(2)(b) drank a bottle of beer and was driving home when his vehicle was stopped at Barnes Avenue and Nereid Avenue in the Bronx by PO1 and PO2, who were identified through this investigation as PO Robert Roda and PO Robert Konner. § 87(2)(b) alleged that PO Roda reached through the open driver side window, turned off the car, and removed the car keys from the ignition (Allegation A). § 87(2)(b) walked away from the scene of the vehicle, walked into his backyard, and sat down in a plastic chair in the backyard. § 87(2)(b) alleged that PO Roda kicked the seat out from under him and pushed § 87(2)(b) towards the ground and pulled him up by his belt to get him to stand up (Allegations B). § 87(2)(b) further alleged that PO Roda pushed him back into a nearby door by his throat causing a lump to form on his neck (Allegation B). § 87(2)(b) was transported to the 47th Precinct stationhouse for his arrest processing. § 87(2)(b) § 87(2)(b) alleged that when he asked PO Roda for medical attention so that he could take his medication, PO Roda pushed him into a nearby wall (Allegation B) and refused to obtain medical treatment for him (Allegation C).

§ 87(2)(g)

Summary of Complaint

§ 87(2)(g)

§ 87(2)(b) who spoke § 87(2)(b), was interviewed at the CCRB on March 24, 2008 with Investigator Cordell Hackshaw acting as an interpreter (enc. 6a-f). § 87(2)(b) came to the CCRB with photos of the incident location (enc. 6d). Any discrepancies are noted below.

On October 12, 2006, at approximately 4:45pm, § 87(2)(b) was in his fish store at East 233rd Street in the Bronx. § 87(2)(b) had a Heineken beer and then bought a bottle of Jamaican white rum for his tenant, which he put it in the back seat, who had asked him earlier to do so. § 87(2)(b) drank the bottle of beer before he left the store. § 87(2)(b) then went on his way home. § 87(2)(b) drove on Boyd Avenue and stopped at the intersection of Boyd Avenue and Barnes Avenue. § 87(2)(b) saw a marked RMP driving past in front of him on Barnes Avenue. As the RMP was passing, PO1, a white male officer with dark hair who was identified through this investigation as PO Robert Roda, looked at § 87(2)(b) and then stopped his vehicle in the middle of the street. § 87(2)(b) turned onto Barnes Avenue, passed the officer, and went to the intersection of Barnes Avenue and Gunther Avenue. § 87(2)(b) was waiting in his car in front of his home at § 87(2)(b), waiting for the light to change to park on the other side of the street. As he was waiting there, PO Roda, who had shield number 1234 on his shield, came up to his vehicle and put his hands into § 87(2)(b)'s vehicle, through the open driver side window. PO Roda turned off the ignition and then removed the keys. PO Roda then asked § 87(2)(b) if he was drinking. § 87(2)(b) told PO Roda that he had only drank one Heineken bottle of beer. § 87(2)(b) asked PO Roda why he removed his car keys. PO Roda said that he thought that § 87(2)(b) was going to run away and so took the keys as a deterrent. PO Roda took § 87(2)(b)'s license and vehicle registration. § 87(2)(b) then got out of his vehicle, walked past the side of the house, and went into his backyard. § 87(2)(b) never told the officers that he lived in the adjacent building. § 87(2)(b) sat down on one of the four plastic chairs that were placed behind his home. No sooner did § 87(2)(b) sit than he saw the two officers, PO Roda and PO2, who was identified through this investigation as PO Robert Konner, coming towards the backyard.

PO Roda kicked the plastic chair § 87(2)(b) was sitting in, which caused one of the chair legs to break. PO Roda pushed § 87(2)(b) towards the ground. § 87(2)(b) fell to the ground into a puddle of water that was underneath the chair. One of § 87(2)(b)'s tenants, whom § 87(2)(b) identified as § 87(2)(b) shouted to the officer and asked him why he was treating § 87(2)(b) in this manner when he was the owner of the building. PO Roda then pulled § 87(2)(b) up by the back of his trousers' waist causing his belt to break in the process. PO Roda pushed § 87(2)(b) towards the back door of his apartment and shoved § 87(2)(b) by the throat onto the door. This caused a lump to form on § 87(2)(b)'s throat. (At the time of the interview, the lump on § 87(2)(b)'s neck looked like a goiter.) § 87(2)(b) did not complain of having his breathing obstructed. PO Konner came up to § 87(2)(b) and said, "Do you not know that we are heavy?" § 87(2)(b) was asked several

times what he thought PO Konner meant when he said “We are heavy,” but § 87(2)(b) did not know what the officer was referring to.) PO Konner then pulled § 87(2)(b)’s arm behind his back and PO Roda placed § 87(2)(b) in handcuffs. PO Roda then pulled § 87(2)(b) by his arm towards the front of the apartment building and placed him into the RMP. One of the officers radioed for assistance. Several officers arrived and one of the officers drove § 87(2)(b)’s truck to the 47th Precinct. PO Roda went into § 87(2)(b)’s vehicle and opened the bottle of rum that was in the back seat. PO Roda broke the seal as he was opening the bottle. PO Roda dumped out the contents of the bottle of rum.

§ 87(2)(b) was taken to the 47th Precinct, then to Central Booking, then to another precinct, and then back to Central Booking. § 87(2)(b) was finally taken to an unknown precinct. At this unknown precinct, § 87(2)(b) asked for some water but the officers told him that he could not have any. PO Roda then had § 87(2)(b) take a sobriety test as well as a Breathalyzer test. § 87(2)(b) again reiterated the fact that he had consumed alcohol earlier during the day. § 87(2)(b) told the officers that he needed to take his hypertension medication. Another officer then told PO Roda that he should ask the paramedics to give § 87(2)(b) something for his hypertension. However, § 87(2)(b) informed the officers that he could only take the medication prescribed to him. PO Roda then pushed § 87(2)(b) back into the wall and said, “Talk to the wall.” § 87(2)(b) turned around and faced the wall. PO Roda issued § 87(2)(b) five summonses for driving without a seatbelt, passing a red light, having an open container, and some other VTL infractions that he could not recall. § 87(2)(b) stated that two of the summonses were ultimately dismissed.

§ 87(2)(b) stated that the officers had confiscated his truck and he has not had it back for over fifteen months. § 87(2)(b) license was suspended and has to re-apply for a new license. § 87(2)(b) went to the doctor when he was released from police custody. § 87(2)(b) went to his general practitioner (§ 87(2)(b)) who referred him to another doctor. § 87(2)(b) stated that § 87(2)(b) would provide the name of the doctor she referred him to. § 87(2)(b) did not remember which doctor he was referred to even though he was treated by the doctor to whom he was referred.

§ 87(2)(b) described PO Roda as a white male who was dressed in uniform, was the driver of the RMP, had shield number 1234, 180lbs, was between 23 to 24 years old, 5’5”, and had dark hair. PO Konner was a white, male, who was dressed in uniform, was the passenger in the RMP, weighed 200lbs, was 35 years old, and was 5’9.”

§ 87(2)(b) alleged that PO Roda choked him when he filed his complaint but made no such allegation during his in-person interview at the CCRB. § 87(2)(b) alleged that PO Roda refused to get him medical attention when he requested it, which § 87(2)(b) made no mention of in any of his earlier statements to the CCRB. § 87(2)(b) claimed that he sustained a lump to his neck as a result of being choked by PO Roda but his arrest photo (enc. 7a) indicates no marks or bruising on his neck or face and that lump he was referring to was already present at the time of his arrest. § 87(2)(g)

Results of Investigation

Officer Identification:

§ 87(2)(b) identified PO Robert Roda by his shield number. PO Robert Konner was § 87(2)(b)’s arresting officer.

Complaint report completed for § 87(2)(b) by PO Robert Konner (enc. 8a-b):

§ 87(2)(b) was stopped for not stopping at a stop sign and not wearing a seatbelt. § 87(2)(b) appeared to be under the influence. A 200ml bottle of alcohol with 63% alcohol was collected as evidence and listed in invoice number § 87(2)(b). § 87(2)(b)’s vehicle, a 2004 Toyota 4 Runner, was used in a crime and was listed under invoice number § 87(2)(b). Sgt. Jeffrey Fusco was the supervisor on the scene.

Arrest report completed for § 87(2)(b) by PO Robert Konner (enc. 9a):

Contains the same narrative as the complaint report. § 87(2)(b)’s physical condition was listed as “intox alcohol.” Physical force was used against § 87(2)(b) to restrain, control, and remove him.

PO Robert Roda and PO Robert Konner:

§ 87(2)(g)

Sprint Print-Out (enc. 10a-c):

A vehicle was stopped at Nereid Avenue and Barnes Avenue by Sector E of the 47th Precinct at 4:34pm and Sector E arrested one person at 4:41pm. Sector E of the 47th Precinct requested that a highway unit respond to the 45th Precinct stationhouse. Sector H of the 47th Precinct transported the person arrested to the 47th Precinct stationhouse. At 7:03pm, one male was transported to the 47th Precinct stationhouse from the 45th Precinct stationhouse and an arrest was made at 10:49pm.

Civilian's Criminal History (enc. 11a-12d):

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian's CCRB History (enc. 4a):

§ 87(2)(b) filed CCRB § 87(2)(b)

Officers' CCRB History (enc. 3a):

No allegations have been substantiated against PO Robert Roda.

Conclusions and Recommendations

Disputed/ Undisputed Facts:

It is undisputed that § 87(2)(b) was arrested and pleaded guilty to driving drunk. It is also undisputed that physical force was used against § 87(2)(b) to restrain and control him.

Assessment of Evidence:

On October 12, 2006, § 87(2)(b) acknowledged that his vehicle was stopped by PO Roda and PO Konner after he drove his car minutes after he had drunk one bottle of beer. § 87(2)(b) alleged that PO Roda reached into his vehicle, turned off the car, and took the keys out of the ignition. § 87(2)(g)

§ 87(2)(b) acknowledged that he walked away from the scene of the vehicle stop. § 87(2)(g)

As was noted above, § 87(2)(b) did not report any allegations of misconduct against the police until more than a year after the incident. In addition, § 87(2)(b) did not mention them when initially filing his complaint. § 87(2)(g)

Allegations Not Pleased:

§ 87(2)(g)

Allegation (A): PO Robert Roda seized § 87(2)(b) s property at § 87(2)(b) Bronx, NY.

According to Barry Kamins's Search and Seizure, "New York courts have permitted the police to take certain self-protective actions, which are responsive to actions taken by a driver during an automobile stop (enc. 1a)." § 87(2)(g)

Allegation (B): PO Robert Roda used physical force against § 87(2)(b) at § 87(2)(b) Bronx, NY. and in an unknown precinct stationhouse.

According to the OATH case *PD vs. Teeter* (2001, OATH Index No. 290/01), "Once an officer has properly determined to arrest an individual, he is entitled to use a minimal or reasonable amount of force in order to restrain and handcuff the individual. To the extent that an arrestee offers resistance to arrest, the permissible level of force used by the officer may be increased to the extent necessary to overcome the resistance (enc. 2a-c)." § 87(2)(b) acknowledged that he walked away from the scene of the vehicle stop. § 87(2)(g)

Allegation (C): PO Robert Roda did not obtain medical treatment for § 87(2)(b) at an unknown precinct stationhouse.

§ 87(2)(g)

Investigator:
Samrawit Tadesse

Date:

Supervisor:
Stephen Poellot

Date:

Reviewed by:
Jessica Long

Date:

Reviewed by:

Date: